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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-third session

SUMMARY RECORD OF THE 7th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 3 August 2001, at 10 a.m.

Chairperson: Mr. WEISSBRODT

later: Mr. PARK
(Vice-Chairperson)

later: Mr. WEISSBRODT
(Chairperson)

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The meeting was called to order at 10.05 a.m.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (item 2 of the provisional agenda) (continued) (E/CN.4/Sub.2/2001/3 and Add.1-3; E/CN.4/Sub.2/2001/NGO/1, 4, 7, 8, 10, 12, 14 and 15)

1. Mr. PARK said that, thanks to United Nations efforts to mainstream human rights in all its programmes and activities, human rights were becoming an integral part of the new international order. Few States dared any longer ignore the basic human rights of their citizens. Fascist and communist ideologies that had sought to justify the systematic and mass violation of human rights had been largely overcome, although human rights continued to be threatened by persistent poverty and bloody conflicts in many parts of the world.

2. He wished, however, to draw the Sub-Commission's attention to the plight of the hundreds of thousands of North Korean defectors who had sought refuge in the Russian Federation, Mongolia and north-east China. Despite the gravity of the human rights violations to which they were subjected, such people were denied refugee status, labelled "illegal trespassers" or "illegal economic migrants" and forcibly returned to a precarious situation.

3. The United Nations High Commissioner for Refugees (UNHCR), the States concerned and the international community as a whole must urgently devise some means of redress for the persons concerned. Many non-governmental organizations (NGOs) maintained that the principle of non-refoulement should be applied in the treatment of defectors in cases where the returnees risked harsh punishment. In that connection, it was most gratifying that, earlier in the year, an unprecedented 11.8 million South Koreans had signed a petition to the United Nations to request better treatment for North Korean defectors . It was vital that UNHCR be accorded access to such persons so that their status under international law could be determined.

4. The resurgence of revisionist tendencies in Asia was another issue requiring urgent attention. To the astonishment of the neighbouring States, the Government of Japan had recently authorized the use in schools of history textbooks that deliberately glossed over Japan's wartime aggression and omitted to mention the tragedy of the "comfort women" - a continuing affront to human dignity.

5. Mrs. DAES drew attention to the deleterious consequences for the health of the indigenous population of the Marshall Islands in the Pacific of a super-Power's illicit dumping on their land of toxic and other hazardous products and wastes.

6. In view of the increased incidence of such dumping in developing countries, which typically lacked the capacity to deal in an environmentally sound manner with the waste, the Sub-Commission should recommend the full implementation of the existing relevant international instruments and of the relevant Commission on Human Rights resolutions adopted at the recommendation of the Sub-Commission as well as close cooperation on the issue among

the competent bodies of the United Nations system. It should also call upon the Special Rapporteur of the Commission on Human Rights on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights to make concrete proposals concerning adequate measures to control, reduce and eradicate such inhuman practices.

7. She also wished to draw attention to the serious violations of human rights and fundamental freedoms that had occurred in Genoa surrounding the recent Group of Eight (G-8) Summit. The excessive security measures and restrictions enforced by the Government of Italy had clearly not been justified by the protection of public order and national interests. Indeed, the riot police had abused their powers, mistreating hundreds of demonstrators.

8. The deteriorating situation of human rights in Northern Ireland should also be addressed as a matter of concern, as should the grave and systematic violations of the human rights of prisoners in many parts of the world.

9. With regard to a written communication she had just received from the observer from Turkey, she wished to point out that the allegations concerning thousands of Greek mainlanders settled in Cyprus since 1963 and 30,000 Pontus Greeks from the Russian Federation were completely unfounded. She urged the Government of Turkey to respect the relevant rulings of the European Court. No State, after all, could consider itself above the law.

10. Mr. JOINET said that the Sub-Commission could boast of many achievements in respect of its action on country-specific situations under agenda item 2. As a direct result of relevant Sub-Commission resolutions - and of the personal engagement of its members - a highly constructive dialogue had finally been established with several (initially uncooperative or wary) Governments on highly sensitive issues, leading to extremely positive results.

11. It was thus that, in Togo, a commission had been established to investigate allegations of disappearances; the results, as noted by the United Nations High Commissioner for Human Rights, had been most constructive.

12. In Bahrain, as a direct result of the dialogue established with the Sub-Commission, the State Party had withdrawn its reservation to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Government in question had also been persuaded to cooperate with the Working Group on Arbitrary Detention, which had established a mechanism for ongoing dialogue between the Government and certain national NGOs then in exile. Subsequently, many prisoners had been liberated and a number of exiles had been permitted to return to their country, including one human rights defender who, as members would remember, had addressed the Sub-Commission while still in exile.

13. In Peru, also as a consequence of the dialogue initiated by the Sub-Commission on the basis of a country-specific draft resolution, an amnesty for perpetrators of grave human rights abuses had finally been lifted. The latter had acted as a catalyst for further positive developments. The fight against corruption had finally caused the finger to be pointed at the

former Head of State, to whom Japan had regrettably provided a refuge. One of the first actions of the new Government of Peru had been to recognize the competence of the Inter-American Court of Human Rights, as recommended by the Sub-Commission.

14. He was pleased also to announce that the Democratic People's Republic of Korea, after initially threatening to withdraw from the International Covenant on Civil and Political Rights, had finally been persuaded to cooperate with United Nations human rights machinery, and had just submitted its periodic report to the Human Rights Committee. Diplomatic relations had been established with a number of States and the country had begun to cooperate with a number of regional and international institutions.

15. The Commission should be made aware that all of the above achievements had been the direct or indirect consequence of the drafting by the Sub-Commission of country-specific resolutions.

16. Lastly, he wished to draw attention under agenda item 2 to three country situations that merited the Sub-Commission's attention. In Italy, the Government had evidently used excessive force in response to the demonstrations surrounding the G-8 Summit in Genoa. The raid on the school serving as the headquarters of the NGO Genoa Social Forum had been particularly deplorable. On a more positive note, a United Kingdom national allegedly beaten by Italian police was currently taking legal action and a parliamentary commission of inquiry into the events surrounding the Summit had been established.

17. In Tunisia, a magistrate had been suspended for expressing doubts concerning the independence of the judiciary, but the matter had been resolved thanks to a discussion he had himself held with representatives of the Tunisian Government in Paris.

18. In Israel, the extrajudicial executions of Palestinians constituted a grave and flagrant violation of international human rights law. Disproportionate measures used by the Israeli security forces against civilians included helicopters and tanks. It was deeply regrettable that a population that had suffered so much in the past should resort to such extremities.

19. Lastly, although he welcomed the fact that the governmental observers for India and Pakistan were making an evident effort to refrain from direct confrontation before the Sub-Commission, he found it shocking that certain NGOs were behaving as if they were governmental observers.

20. Mr. KIM Song-chol (Observer for the Democratic People's Republic of Korea), speaking in exercise of the right to reply, said that he was loathe to respond to the irresponsible and provocative remarks made by a fellow national. Mr. Park had, however, spoken rubbish, and his assertion that there was a "North Korean refugee problem" in China was pure fiction. A large number of Koreans lived in north-east China and people crossed the border each year - in both directions - to visit relatives. As for the few persons that had illegally crossed the border, all planned to return once economic conditions improved, and most had already returned voluntarily. The so-called "refugee problem" was a "foolish farce" orchestrated by hostile forces and intelligence agents who had kidnapped people in the north and lured them to the south with

the sole purpose of undermining north-south reconciliation and preventing the unification of the country. The Sub-Commission should help those innocent victims of brainwashing to return to their homeland.

ORGANIZATION OF WORK (item 1 of the provisional agenda) (continued)

21. The CHAIRPERSON drew attention to a proposal by the Bureau that the Social Forum should be discussed at two three-hour meetings on 13 August 2001. Following an introduction by Mr. Bengoa, the originator of the idea of a Social Forum, the first meeting would consist of a panel discussion. The following panellists had already agreed to participate: Mr. George Abi Saab, Ms. Hina Jilani, Mr. Andrew Clapham and Mr. Rubens Ricupero. Invitations had also been issued to Mr. Somavia of the International Labour Organization (ILO) and to representatives of the United Nations Development Programme (UNDP), the World Bank, the International Monetary Fund (IMF) and the World Trade Organization (WTO).

22. At the second meeting, the discussion would be thrown open to representatives of intergovernmental and non-governmental organizations and of Governments. The Special Rapporteur of the Commission on Human Rights on adequate housing as a component of the right to an adequate standard of living and representatives of the Committee on Economic, Social and Cultural Rights would also be invited to participate.

23. He took it that the Sub-Commission wished to adopt the procedure proposed by the Bureau.

24. It was so decided.

ADMINISTRATION OF JUSTICE (item 3 of the provisional agenda) (E/CN.4/Sub.2/2001/6 and 8 and Corr.1; E/CN.4/Sub.2/2001/NGO/5, 9 and 16; E/CN.4/Sub.2/2000/44; E/CN.4/2001/59 and Corr.1 and Add.1)

25. Mr. KASHMIRI (European Union of Public Relations) said he belonged to the part of the State of Jammu and Kashmir that was occupied by Pakistan, a country in which judges investigating corruption in high places were forced to resign. The judiciary was not independent; corruption, nepotism, solitary confinement, disappearances and murder were common. He had himself been deprived of his liberty and subjected to torture for having spearheaded the campaign for liberation from Pakistan and unification of the State of Jammu and Kashmir. He had been held in solitary confinement by the Pakistani security agencies for over eight months in 1998 and owed his release to NGOs such as Amnesty International and to the Sub-Commission.

26. During the elections held in July 2001, leaders of the mainstream Kashmiri political parties had been detained and prevented from reaching the polling areas. According to Amnesty International, over 100 people had been arbitrarily detained in Pakistani-occupied Jammu and Kashmir during the election period.

27. Leaders of the United Kashmir Peoples National Party, the Balwaristan National Front and other parties that were seeking to liberate the so-called "Northern Areas" (Gilgit-Baltistan) from Pakistan had been detained and the whereabouts of many of them was unknown.

28. Mr. MADELIN (International Federation for Human Rights) said he wished to stress the importance of the principle of universal jurisdiction, by virtue of which the perpetrators of crimes against humanity could be prosecuted anywhere, regardless of where the crimes had been committed and the nationality of the perpetrators or victims. If States were willing to act on that principle, persons accused of heinous crimes would no longer enjoy impunity. His organization thus welcomed the outcome of the proceedings in Belgium against Rwandans who had participated in the genocide in their country.

29. It deplored, on the other hand, the decision of the Senegalese Court of Cassation which had ended the proceedings against the former President of Chad, Hissène Habré, for what were obviously political reasons. However, the fact that he had been indicted, in response to an initiative by Chadian and Senegalese organizations of victims and human rights groups, meant that impunity in Africa was not inevitable and that the principle of universal jurisdiction could and should be applied in the countries of the South. The Sub-Commission should remind States that, according to the Preamble to the Rome Statute of the International Criminal Court, it was the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.

30. An international fact-finding committee sent by his organization to the United States in April 2001 had found that the defence in capital cases were denied essential guarantees of due process although the United States had recognized the right to a fair trial in the Sixth Amendment to the Constitution and in the International Covenant on Civil and Political Rights, which it had ratified in 1992.

31. The First World Congress Against the Death Penalty had brought together NGOs, jurists, politicians, journalists and former death-row inmates in Strasbourg, France, in June 2001. One month later, the European Parliament had urged the Council of Ministers to submit a resolution on the abolition of the death penalty to the next session of the United Nations General Assembly. He called on the Sub-Commission to support that initiative.

32. Many cases of arbitrary arrest and detention of politicians and students in Mauritania for reasons of public security had been documented by his organization and the Mauritanian Human Rights Association. The individuals concerned were often held in inhuman conditions and denied access to a lawyer.

33. In the Central African Republic, accused persons and convicted prisoners were being held in inhuman conditions in police stations and gendarmerie barracks since the closure of the prison in Bangui. Overcrowding had led to the release of "dangerous" prisoners, who thus enjoyed impunity, and to the development of popular justice, including summary executions. Following the attempted coup in May 2001, government forces and their allies had committed massive human rights violations, especially against members of the Yakoma ethnic group. A judicial commission of inquiry into the events was operating as a special court, playing the role of prosecutor and subjecting suspects to humiliating treatment.

34. A mission by his organization to Cameroon had brought to light abuses by the Operational Command set up in Douala to fight against crime. Many people had been arrested on the basis of unsubstantiated reports, summarily executed and their bodies burnt. A number of mass graves allegedly related to the activities of the Operational Command had been found the previous year. The Government had provided no credible explanation to date.

35. Lastly, he drew attention to the continued unlawful and arbitrary detention of two Buddhist religious teachers in Viet Nam notwithstanding decisions by the authorities to release them.

36. Mr. Park, Vice-Chairperson, took the Chair.

37. Ms. PARKER (International Educational Development, Inc.) said that many Governments sought to circumvent the provisions of humanitarian law by reclassifying armed conflicts as "terrorism and counter-terrorism". As a result, persons who should be afforded rights under humanitarian law were being held and tried under anti-terrorism laws. Turkey, for example, had not tried Abdullah Ocalan, the leader of the Kurdistan Workers Party (PKK), as a prisoner of war but as a terrorist charged with treason. The proceedings, which had been criticized by the European Court of Human Rights, had been void ab initio on account of the failure to bring valid charges.

38. The Indian authorities had also failed to apply humanitarian law in Indian-occupied Kashmir. Large numbers of Kashmiri detainees had been severely tortured or even killed in custody. To deflect international criticism, the authorities consistently referred to its victims as "Islamic terrorists". The Sub-Commission should insist on the need for all parties to the conflict to abide by humanitarian law.

39. Since the Chinese regime had made the practice of Falun Gong illegal in 1999, over 10,000 practitioners had been arrested and nearly 300 had died in custody. Torture was widespread and well documented. Her organization was working with Falun Gong practitioners to submit their cases to the relevant United Nations human rights bodies. A number of cases of deaths in custody had recently been reported to the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions. Further cases of torture, arbitrary arrest and violence against women would be documented. She urged the Sub-Commission to address the issue as one that clearly fell within its mandate.

40. Ms. WADHERA (Asian Centre for Organization Research and Development) said that people of different religions and faiths in India were governed by different sets of personal laws in respect of matters relating to personal and family affairs. However, they were also free to choose the common civil law on such matters.

41. The rights of women in India, particularly in the villages, had long been neglected but the situation had been rectified by an amendment to the Constitution that reserved one third of all seats in local authority elections for women.

42. Despite the reports of politically inspired human rights violations in areas of conflict such as Jammu and Kashmir, safeguards had been put in place in legislation, the courts and the

ministries to prevent and control such events. The National Human Rights Commission was a statutory body that monitored any civil rights violations by the central or State authorities and recommended measures to provide justice to all sectors of the population. Separate official bodies existed to look after the interests of different sub-sectors, such as scheduled castes and tribes, minorities and the disadvantaged, and the schools of minority religions were protected.

43. India also had independent and effective media and a strong NGO movement, which played a role in ensuring the administration of justice to minorities, the disadvantaged and women. Furthermore, under the democratic system, the Government was answerable to the people and their representatives in Parliament.

44. Countries should be given special incentives to put in place democratic structures and principles, including substantial development assistance financing; at the same time, there should be disincentives for those who trampled upon democratically-elected Governments and the Sub-Commission might consider setting up a working group to consider the issue.

45. Ms. SAITO (International Association of Democratic Lawyers) said she wished to draw the attention of the Sub-Commission to the issue of the war crimes committed by the Japanese pre-war imperial regime in its aggressions against other Asian countries. During the Asian-Pacific war, from 1931-1945, Japan had invaded north-eastern China and then advanced throughout the whole Asian-Pacific region perpetrating horrendous atrocities. There were also numerous war victims in the region during the Second World War.

46. She also wished to emphasize the plight of the victims of the 1925 Public Order Maintenance Law, which subjected those who were regarded as sympathizers of the anti-war struggle to arrest and imprisonment. After the surrender of the imperial regime in 1945, the Public Order Maintenance Law was abolished and those who had been detained under it regained their liberty and their civil and political rights.

47. In 1968, they had formed an association and, since 1974, had been petitioning both Houses of the Japanese Parliament for an official apology and compensation. The Governments of Germany and Italy had reflected on their wartime activities and provided compensation to victims and it was imperative that the Japanese Government should urgently apologize to and compensate victims of war crimes, in order to stimulate reflection and self-criticism about the war. Japan should also ratify the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

48. Mr. LEBLANC (Franciscans International) called for an end to the death penalty, in particular in the United States. Since 1997, the United Nations Commission on Human Rights had adopted resolutions for a moratorium on the death penalty and, currently, 109 of the 185 Member States of the United Nations had called for an end to the death penalty or a moratorium on its practice.

49. Whereas, every year, more countries abolished the death penalty, there had been an increase in its use in the United States. There were 38 States that provided for the death penalty in law and over 3,700 prisoners had been under sentence of death in the United States as of 1 January 2001. As in other countries where the death penalty continued to exist, it was more

likely to be applied in a racist manner and to minorities and the disadvantaged in general; that was particularly heinous in the case of those suffering from mental retardation.

50. Since 1995, only three countries in the world were reported to have executed mentally retarded defendants: Japan, Kyrgyzstan and the United States. Following a visit to the United States in 1997, the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions had stated that the practice was contrary to international standards and called upon the authorities to put an end to it.

51. Research had failed to provide any scientific proof that executions had a greater deterrent effect than life imprisonment. His organization viewed the death penalty as perpetuating a cycle of violence and promoting a sense of vengeance; its continued use taught that violence and killing were acceptable ways of dealing with violence and killing. The healing of the victim, together with the reform and rehabilitation of the offender, should be the goal of a criminal justice system.

52. Franciscans International consequently supported the moratorium called for by the Pope in 1998, the call for the abolition of the death penalty by the United States bishops and the international initiative, Moratorium Now. It urged Governments to seek alternatives to the death penalty that reflected intelligence, civility, compassion and justice; and it called on all Governments to suspend the death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

53. Mr. PANDITA (Interfaith International) said that voluntary observance of the tenets of religion decreased the likelihood of human rights violations and maximized the scope for the administration of justice. At the same time, politicizing religion not only debilitated its positive effects but also created tensions among groups of people who would, otherwise, live in peace and friendship. In theocratic States, religious minorities were prejudiced by an exclusionist legal system. At times, such States evolved parallel legal systems to cater to universal or international legislation; alongside the penal code structure, the tenets of the majority religion were enforced through religious courts and when the two systems collided, the State was often forced to succumb to extremist religious groups.

54. With regard to intergovernmental judicial cooperation, the Sub-Commission should consider the question of extradition treaties agreed to by all the States Members of the United Nations. Such treaties would reduce the frequency of crimes against humanity, since the administration of justice was obstructed when no legal action could be taken because an offender had fled to another country.

55. Ms. LE PENNEC (World Organization against Torture) said she welcomed the adoption by the Sub-Commission of a sub-item on racial discrimination in the administration of justice and wished to draw its attention to the persistence of certain policies and practices against a highly vulnerable group, namely, immigrants and asylum-seekers. Racism and racial discrimination affected such persons disproportionately, owing to a systematic lack of protection.

56. One example of discriminatory legislation was the situation of unaccompanied minors requesting asylum who were not admitted to French territory. Those who lacked the appropriate

documentation were retained in waiting zones under article 35.4 of the 1945 law on the entry and sojourn of foreigners, which allowed them to be held for up to 20 days. She questioned the legality of that detention in view of the provision of article 37 of the International Convention on the Rights of the Child that "the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time" and of the clarification by the Committee on the Rights of the Child that the provision included children seeking asylum and young refugees.

57. Moreover, in a recent decision, the French Court of Cassation appeared to have accepted that an unaccompanied foreign minor could be held in a waiting zone despite his lack of legal competence, even though that was a violation of a fundamental element of the protection of children: their lack of legal competence and the principle of equality before the law. She therefore urged the Sub-Commission to monitor the detention at the border of unaccompanied minors who were not allowed to enter the territory.

58. She also recalled the requirement that States must guarantee that asylum-seekers were held in special detention centres and not placed with those accused or convicted of criminal activities and drew the Sub-Commission's attention to the case of Australia, where asylum-seekers were held in internment centres for inordinate lengths of time in "shocking" conditions, according to members of that country's Parliament.

59. Official anti-racist policies should not hide the reality of policies of closing national frontiers to refugees and asylum-seekers. All too often, excessive and disproportionate force was used when turning away would-be immigrants.

60. Likewise, in the context of the campaign against racism, States should endeavour to remedy the growing institutionalization of racial discrimination within their penal systems and prison policies.

61. Mr. Weissbrodt resumed the Chair.

62. Mr. BHAN (Indian Council of Education) said that he was seeking justice for the people of Jammu and Kashmir. He was one of the hundreds of thousands of people who had been forcibly evicted from Kashmir and obliged to live in camps in Jammu, Delhi and elsewhere in India, while thousands of Kashmiris had been brutally massacred by the militarized pan-Islamists, who crossed the border from Pakistan. The military regime in Pakistan called them "freedom fighters", but they brought death and destruction to civil society and had contributed to the collapse of the administration of justice.

63. In Pakistani-occupied Kashmir there had been fraudulent elections recently, fraudulent because most of the mainline Kashmiri political parties had been barred from contesting and the majority of the electorate had been disqualified from voting. Although a moderate had led his Muslim Conference party to victory, the Pakistani Army had imposed a hardliner from another party as the head of the Government and a president was also being imposed by the military regime.

64. All the people of the State of Jammu and Kashmir looked to the Sub-Commission to reprimand Pakistan for its support of terrorism, which had destroyed the components of civil society, and sought support for rebuilding the social ethos of the area based on democracy, the rule of law, human rights and the administration of justice.

65. Ms. DANN (Indian Law Resource Centre) said that the Western Shoshones called upon the international community to put pressure on the United States to cease its discriminatory conduct against them. Several years previously, the United States Supreme Court had decided that the Federal Government was their trustee and could accept payment for their lands - lands that the Shoshones had never agreed to sell. Those lands were their life and they continued to live on them and maintain their cultural and economic survival through them. The Supreme Court had alleged that their lands had gradually been encroached on and settled by whites and others, but that was not true; only Western Shoshones lived on those lands. The Government was currently introducing the Western Shoshone Distribution bill which would automatically distribute the monies supposedly accepted by the Secretary of the Interior claiming to be the trustee of the Western Shoshone people but the Western Shoshones could not accept money for their mother earth, for their religious beliefs. It was a case of abuse of justice rather than administration of justice.

66. Mr. AJAAKIA (World Federation of Democratic Youth) said that, for many years, the Punjabi-dominated civil and military regimes in Pakistan had been committing gross human rights violations against the Mohajirs in urban Sindh. The administration continued to use methods such as extrajudicial killings, arbitrary detentions and enforced disappearances against the Mohajir population. It also denied adequate representation to Mohajirs in public office. Recently, a leading member of the Muttahida Qaumi Movement (MQM) had attempted suicide while in police custody, having been subjected to prolonged mental and physical torture. A number of other political activists had been arrested and tortured, or had disappeared altogether. The judicial system in Pakistan was manipulated by the military regime. He urged the Sub-Commission to call on the Government of Pakistan to end its policy of discrimination against the Mohajirs, and to carry out a population census for the purpose of enabling all the ethnic and linguistic groups to have an equitable share in the governance of the country.

67. Ms. BIONDI (International Confederation of Free Trade Unions) said that State-sponsored violence against trade union members was a common problem throughout the world. In Belarus, it was almost impossible for trade unions to carry out legitimate activities free of government interference. A recent Presidential Decree had virtually banned the organization of strikes, and declared all trade union meetings illegal during the run-up to the forthcoming presidential elections.

68. In Swaziland, a Decree issued on 22 June 2001 had exacerbated the repression of democratic and civil freedoms that had begun in 1973. The independence of the courts had also been eroded, since the King appointed judges at his own discretion. The General Secretary of the Swaziland Federation of Trade Unions had been forced to endure repeated threats and arbitrary detentions.

69. In South Korea, massive human rights violations linked to the administration of justice had occurred over the past year. Arrest warrants had been issued for the entire executives of

trade unions, many union members had been detained without trial, and the police had carried out violent attacks to prevent legitimate activities. She called for the immediate release of all imprisoned trade unionists in South Korea, for those responsible for unlawful assaults to be brought to justice, and for workers' rights to be re-established.

70. Mr. BEN MARZOUK (Young Doctors Without Frontiers Tunisia) said that the creation of the necessary conditions for sustainable growth and development was the key to promoting international human rights law. Trade liberalization must take into account the need to improve the welfare of societies, as well as the consolidation of international human rights instruments. International organizations should try to raise the profile of international law, among legal practitioners, in educational institutions and among the members of the general public.

71. The rule of law and the consolidation of democracy were essential preconditions for the enjoyment of human rights and fundamental freedoms. The right to freedom of expression did not include, however, the right to abuse the dignity of others and to ignore the supremacy of the law. The rule of law should be maintained by an independent judiciary, and democracy reinforced by a pluralistic debate, as well as a rich diversity of political parties and associations.

72. Ms. HAMPSON said that impunity was systematic and total for officers taking part in United Nations peacekeeping operations. All officers of the United Nations Civilian Police (CIVPOL) and military peacekeeping forces in the Balkans, East Timor and other areas were granted diplomatic immunity. If an officer was found to have been involved in criminal activities, the highest punishment that the United Nations could impose was dismissal and subsequent repatriation. The authorities in the officer's country of origin were under no obligation to follow that up with the appropriate criminal proceedings.

73. In Bosnia, several CIVPOL officers had been forced to resign after allegations of statutory rape, the facilitation of prostitution and acceptance of gifts from Bosnian officials. None of them had faced prosecution either in Bosnia or in their home country. In another case, in Kosovo, a CIVPOL officer accused of sexual relations with a 14 year-old mentally handicapped girl had escaped all criminal charges, despite the fact that the prosecutor's file had been sent to his country's permanent mission in New York. There was no mechanism for ensuring that States took the necessary legal action in such cases.

74. Military forces in Kosovo were also committing numerous violations of human rights law, including the expropriation of private property and the routine detention of minors with no guarantee of the right to a fair trial. Colonel Gross, chief of staff for the United States peacekeeping force in Kosovo, had admitted that many suspected members of Albanian nationalist groups were detained without adequate legal evidence, and deliberately denied the right to stand trial. In one case, a detainee had been severely beaten in the custody of peacekeeping officers, and had eventually "disappeared" in unusual circumstances. No legal remedy had been made available to his relatives. Moreover, the Ombudsman in Kosovo had been prohibited from investigating complaints against Kosovo Force (KFOR) officers.

75. She would like to know why no representatives of the International Committee of the Red Cross (ICRC) were visiting detainees in Kosovo. Where international civil servants had evidence of misconduct, they should be under an obligation to send detailed reports to the

Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia and to any relevant thematic rapporteurs. In a climate in which all legal responsibility was denied in Kosovo, it could not be left to individual victims or local lawyers to submit reports.

76. When it examined the reports of States whose forces took part in peacekeeping operations, the Human Rights Committee should address the problem as a matter of urgency. She called on the experts of the Sub-Commission to examine the issue of the effective accountability of peacekeeping forces and members of CIVPOL acting in the name of the international community.

77. Mr. JOINET, while agreeing that there appeared to be a lack of an effective mechanism to ensure the accountability of United Nations peacekeeping forces, said that Ms. Hampson had nevertheless simplified a very complex situation. She had addressed two separate issues: ordinary offences committed by CIVPOL or peacekeeping officers on one hand, and restrictions on fundamental freedoms in the context of efforts to restore order on the other. With regard to ordinary offences, officers had to take responsibility for their actions, although he did not believe that the instances referred to by Ms. Hampson constituted a widespread phenomenon.

78. In respect of the second issue he could speak from experience, since he had visited the Balkans and East Timor in the context of investigations for the Working Group on Arbitrary Detention, and say that a judicial void existed whenever a peacekeeping operation was undertaken. When criminals needed to be arrested in East Timor, peacekeeping officers had to act without respect for the right to due process, since the entire legal system of the country had collapsed. It was extremely difficult to organize an independent judicial system under such circumstances. In states of emergency, certain derogations from human rights instruments were sometimes necessary in order to restore democracy and the rule of law. While he fully agreed that a set of rules were needed to apply to transitional situations, the usual standards of civil and political rights were not always applicable.

79. Mr. EIDE said that there was an urgent need for rules and regulations applicable in peacekeeping operations. He urged that Ms. Hampson and Mr. Joinet be given the task of developing working papers on the issue.

80. Mr. GUISSÉ said that peacekeeping operations usually took place in countries where the justice system was no longer functioning. The United Nations had not, however, created a mechanism to provide justice, including possible compensation, for the victims of abuse. The experts of the Sub-Commission were the right people to address the issue of developing rules that would guarantee accountability.

The meeting rose at 1.05 p.m.